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HALL OF JUSTICE

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October 7, 2016

TO: SUPERVISOR HILDA L. SOLIS, Chair
SUPERVISOR MARK RIDLEY-THOMAS
SUPERVISOR SHEILA KUEHL
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: JACKIE LACEY 
District Attorney

SUBJECT: DISTRICT ATTORNEY'S RESPONSE TO APRIL 12, 2016
BOARD OF SUPERVISORS' MOTION

On April 12, 2016, the Board of Supervisors directed the District Attorney to respond to three concerns:

- I. Identify the number of victims impacted by Proposition 47 crimes;**
- II. Track and monitor the outreach effort(s) currently used (and newly proposed) to provide victims advance notification about upcoming resentencing matters/hearings and their right to be heard; and,**
- III. Identify any barriers that prevent victims from exercising their rights along with potential services or support by the county to alleviate those barriers.**

The District Attorney was also directed to report their response in the CEO's next quarterly report on the status of implementation of Proposition 47 (Prop 47). The CEO requested the District Attorney submit a response directly to the Board of Supervisors.

The purpose of this report is to respond to the three concerns of the Board by identifying potential gaps in victim service that have arisen since the passage and the required immediate implementation of Prop 47 on November 5, 2014.

I.
Identification of the Number of Victims Impacted by Proposition 47

Proposition 47 applies generally to drug possession offenses which do not involve victims, and certain theft related offenses where the loss does not exceed \$950, crimes which can involve direct victims. Prop 47 does not apply to crimes of violence or crimes involving a loss exceeding \$950. Identified victims of theft related offenses have been impacted by Prop 47 in four ways.

First, victims have the constitutional right, upon request, to be informed of, be present at, and be heard at public proceedings. A Prop 47 reduction from a felony to a misdemeanor is a resentencing and post-conviction release proceeding, thus victims have a right to be notified of this, be present, and be heard at the public proceeding.

Second, victims' constitutional right to restitution is impacted by the reduction of a felony charge to a misdemeanor. There are many governmental agencies which collect court ordered restitution from convicted felony defendants and send this money to victims. There are no such collection procedures for defendants convicted of misdemeanor crimes.¹

Third, Prop 47 mandates that certain theft related crimes may only be charged as misdemeanors. While there are many governmental agencies that collect restitution from convicted felons and send this money to victims, there are no governmental agencies that collect restitution from misdemeanants.

Fourth, the financial compensation available to victims of crimes of violence or threat of violence through the California Victim Compensation Program² will be reduced because of Prop 47. Defendants convicted of felony crimes must pay a minimum restitution fine of \$300. Defendants convicted of misdemeanor crimes must pay a minimum restitution fine of \$150. The California Victim Compensation Program is the only governmental resource which is available to reimburse victims of crimes of violence for funeral/burial costs, relocation, medical and mental health expenses. With fewer defendants convicted of felony crimes, the money available to victims of crimes of violence will decrease.

The District Attorney's Office does not have a mechanism to identify the number of victims impacted by Prop 47. In order to estimate the potential number of victims impacted by Prop 47, the CEO directed the Information Systems Advisory Body (ISAB) to use the list of data, excluding the drug possession charges, they are currently using for the Prop 47 outreach campaign to estimate the number of defendants and/or cases for potential reduction pursuant to the filing of Prop 47 applications and petitions. ISAB produced a report identifying 335,554 cases and 627,390 charges as an estimate of the number of theft related offenses where victims may have suffered losses requiring restitution. (Attachment 1. – Information Systems Advisory

¹ Custodial agencies, the Probation Department and the Division of Adult Parole Operations collect restitution from defendants in custody, on formal probation, post-release community supervision, mandatory supervision, or on parole and send this money to victims. There is no collection agency for defendants who are not in custody or under formal supervision and the Probation Department neither supervises nor collects restitution from misdemeanants.

² <http://vcgcb.ca.gov/victims/>

Body (ISAAB). Just as the outreach campaign list of potential defendants and/or cases would be over inclusive, so would the list of potential victims. As with the outreach campaign, some charges identified, upon further scrutiny, would not qualify for reduction due to the underlying facts of the crime or the prior conviction history of the defendant. While victims of all qualifying charges may be impacted by notification rights of the reduction of the offense, all victims may not be owed restitution because property was recovered, the theft was thwarted before property or money was stolen, or victims already received restitution in full for their losses. The same list of ISAB charges could also be used to project future victims of potential qualifying Prop 47 misdemeanor offenses based on current crime rates.

II.

Track and Monitor Victim Notification Outreach Efforts

Victims' constitutional rights are established by Marsy's Law and in part by long-standing pre-existing law.³ Marsy's Law gives victims the right, upon request, to be informed of, be present at and be heard at any resentencing hearing.

The following victim's constitutional rights are impacted by Proposition 47:

- (1) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings;
- (2) to be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue;
- (3) to be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody;
- (4) to be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender; and
- (5) to be informed of these rights.

³ On November 4, 2008, the People of the State of California approved Proposition 9, the Victims' Bill of Rights Act of 2008: Marsy's Law. This measure amended the California Constitution to provide additional rights to victims and generally incorporated pre-existing victims' rights.

Proposition 47 referenced victims' rights granted by Marsy's Law by adding section 1170.18(o) to the Penal Code. The section states: "A resentencing hearing ordered under this act shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law)."

Proposition 47 allows for resentencing of a defendant currently serving a sentence on qualifying felony offenses (Penal Code 1170.18(a)) when the defendant brings a *petition* for reduction of that offense to a misdemeanor. It also allows for offenders who have completed their sentences to make *application* for a reduction of their felony conviction to a misdemeanor (Penal Code 1170.18(k)). The Proposition thus extended post-conviction relief to all defendants convicted of certain felonies that under the current law would otherwise be a misdemeanor. If granted relief, the offender becomes a misdemeanant instead of a felon. Victims have a right to be informed of and appear at post-conviction hearings that seek to resentence defendants under Prop 47 and to be informed of case dispositions, that is to say the denial or granting of the application or petition, *if they request notification*.

The problem that arises out of Prop 47 is that no victim could have foreseen Prop 47 and the potential it brought for a reduction in the crime level in all cases with qualifying offenses with no limit as to how far back in time the law reaches. Soon after Marsy's Law was passed in 2008, the District Attorney's Office began sending letters advising victims of their rights under Marsy's Law when charges were filed identifying a named victim. However, many of the Prop 47 impacted crime victims predated the passage of Marsy's Law.

Beginning in November of 2014, starting the day after the passage of Prop 47, the District Attorney issued three General Office Memoranda 14-099; 14-102; and, 15-013, that established policy with regard to Prop 47 which specifically included policy directing compliance with victim rights. (Attachment 2. – General Office Memoranda). The policy set down requirements to notify victims in writing of the reconsideration hearings and potential case level reductions; sample letters were provided. Prop 47 petitions and applications for reductions are handled in three separate venues by the District Attorney; in some instances, a single petition may result in appearances in multiple venues. The first venue is in the local courthouse where the defendant was originally sentenced. The second venue is in the Third Strike Resentencing Unit (TSR). The third venue is in the Parole Revocation Section (PRS).

With respect to the cases handled in the local courthouse where the defendant was originally sentenced, the decision whether to grant the reduction of the charge from a felony to a misdemeanor is predominantly a legal determination as to eligibility of the charges and prior convictions as governed by the Proposition, without a factual basis to assess suitability. Unlike those heard in TSR as mentioned below, dangerousness is rarely litigated in the petitions and applications heard in the local courts, therefore there is no impact the victim's presence at the hearings can have on the legal determination made by the judge.

Although there is no system tracking how many victims request notification on Prop 47 cases, anecdotally victims of non-violent crimes rarely request subsequent notification following the receipt of an initial letter advising them of their rights. There are three District Attorney Victim Service Representatives (VSRs) assigned to provide enhanced assistance with Marsy's Law

rights for any victim responding to the Marsy's Law letter notifications or referred by others or for any victim who needs special assistance. The District Attorney's Office is in the process of hiring the five new temporary paralegals approved by the Board of Supervisors in the 2016-2017 budget to help process the estimated 800,000 plus Prop 47 petitions and applications. The Office is also developing a database for paralegals to use, once hired and trained, to track the number of letters sent to victims on Prop 47 petitions and applications.

TSR handles all litigation under Proposition 36 (Prop 36) (effective November 2012) when third strike offenders in prison petition the court to be resentenced to lower state prison terms. These are the state prison inmates with the most numerous and most violent prior crimes, and the entire Unit is dedicated to handling these third strike offenders. Many of these third strike inmates also file petitions under Prop 47 (effective November 2014), requesting that certain felonies be reduced to misdemeanors. For the same reason, TSR also handles all Prop 47 petitions filed by third strike offenders. TSR expends considerable resources opposing these petitions because the criminal histories are so violent and complex.

Marsy's Law letters were also sent to victims on Prop 36 petitions. The number of letters sent and the number of responses received was not tracked, however, if a victim requested to be present at the hearing on the Prop 36 petition, the request was entered into a specialized database so that the victim could be notified. If a Prop 47 petition was filed later on a case in which a Prop 36 petition was already pending, any victims would already have been contacted according to TSR procedures for Prop 36 cases. To date, 113 orders to show cause have been issued by the court on Prop 47 petitions filed on third strike cases. As only theft related Prop 47 charges involve victims, the number of victims contacted on third strike Prop 47 petitions is likely less than 100. Only one victim on a third strike Prop 47 case has requested to be present at the hearing on the petition. The judge presiding over third strike Prop 47 suitability hearings (in which dangerousness is litigated) has signaled a willingness to allow victims to be heard at the hearings.

A recent change in the law has created a new wave of Proposition 36 petitions (about 39 so far) and Proposition 47 petitions have been or will be filed on some of those cases. TSR is tracking the victim contacts on the new Prop 36 petitions, and almost all of the Marsy's Law letters tailored to Prop 36 petitions have already been sent. A paralegal is assigned to send these letters. Third strike inmates who are part of the latest wave of petitions will still be serving at least one 25-to-life sentence in state prison and will not be immediately released. Victims are advised in the Marsy's Law letter that, if they wish to be notified about any future parole hearings, they should keep their contact information current with the California Department of Corrections and Rehabilitation (CDCR).

PRS staff handle the parole revocation caseloads, both for defendants placed on Post Release Community Supervision (PRCS) and for those placed on traditional parole in the four Parole Revocation Courts that are dedicated to this function. Prop 47 intersects with parole revocations when an offender is currently on either parole or PRCS. If parole or PRCS is terminated based on a local court granting a Prop 47 petition, two VSRs assigned to PRS have, in most cases,

already attempted to notify any identified victims(s). PRS receives large numbers of Release Notifications from the CDCR concerning the release of all Los Angeles County inmates. These notifications do not distinguish whether the offender is being released because of a Prop 47 reduction. VSRs assigned to PRS also review each of these notices and attempt to contact all victims where the supervised person was released from CDCR on a grant of PRCS. Where the inmate was released onto parole supervision, the District Attorney does not make such notifications because the CDCR retains jurisdiction over the inmate per PC 3000.08 and continues to make such notifications.

Due to the age of some of these cases, the ability to notify victims is compromised because contact information may not be current. Efforts are made in all three of the above described venues using available means to locate the victim using the Department of Motor Vehicles, Lexis, social media, and other available search engines and local, state or federal databases and obtain current addresses.

Additionally, the District Attorney's Bureau of Victim Services is collaborating with 211 LA County⁴ in an effort to provide resources to Prop 47 victims. 211 LA County will refer any caller who self identifies as a victim to the Bureau of Victim Services. VSRs will assist any Prop 47 victim seeking services with referrals to appropriate services. 211 LA County will provide a list of victims that they referred to BVS on a monthly basis and BVS will compare that list to the names of victims we assisted and report back to 211 LA County on whether the victims contacted BVS for assistance.

III.

Identify Barriers Preventing Victims from Exercising their Rights And Identify County Solutions

There are barriers to victims that have remained historically constant that both pre-date Prop 47 and are exacerbated by Prop 47. First, restitution collection in the criminal courts is strongly impacted by Prop 47 because of the increase of misdemeanants. Second, requiring victims to repeatedly come back to court causes additional financial hardship and is problematic for victims who do not speak English. Third, assistance to victims who seek to civilly enforce their restitution orders must be considered if victims are to be given a meaningful ability to collect restitution.

A.

Safeguarding Victims' Rights to Restitution Collection for Misdemeanor Crimes in the Criminal Courts

Marsy's Law also gives victims the constitutional right to court ordered restitution, regardless of whether the level of the crime is a felony or a misdemeanor. Prosecutors assist victims in obtaining court ordered restitution in the criminal courts. The specialized Restitution Enhancement Program (REP) assists prosecutors in obtaining court orders for restitution in cases that are complex or that involve a loss amount more than \$2,500, whether the case is a felony or misdemeanor. Prop 47 has no effect on the ability to obtain a restitution order from the court.

⁴ <https://www.211la.org/>

Orders that were obtained in matters that were ultimately reduced to misdemeanors because of Prop 47 remain valid.

However, Prop 47 has significantly compromised the ability of a victim to *collect* court ordered restitution. Convicted felons on formal probation are subject to restitution collection through a formalized collection system that is authorized by statute. The Probation Department and the Treasurer-Tax Collector have a well-developed system for both collection and distribution of restitution to victims when the defendant is on felony probation. *However, a victim's ability to access this formalized system is dependent upon the defendant having felony level status.* Consequently, when a case is reduced from a felony to a misdemeanor pursuant to Prop 47, the order for restitution remains in place, but what does not remain in place is the level of supervision of the defendant and the capacity to formally collect on the court order through the Probation Department as part of the supervision. Misdemeanants are not subject to formal supervision by the Probation Department and there is no formal restitution collection from misdemeanants by the Probation Department.

The Bureau of Victim Services (BVS) priority direct service mandate has always been to assist victims of violence or threats of violence in both felony and misdemeanor cases, filed or not filed. This is because the funding underpinning the work of the Bureau requires that the priority for providing support be primarily directed to victims of violent crime. Although BVS anticipates having approximately 60 VSRs by December, 2016, BVS will still be challenged to assist all victims of crimes of violence or threat of violence in Los Angeles County. The federal Victims of Crime Act (VOCA) and state level funding from California Office of Emergency Services (CalOES) or California Victims Compensation Program (CalVCP) both target assisting victims of violence. There is some leeway to provide victim assistance on nonviolent crimes because state funding does not mandate that assistance solely be given to victims of violent crime. However, as a general rule, victims of violent crime and threats of violence are the expected target population for assistance by both the federal and state funding sources. Cases that qualify for Prop 47 relief do not involve violence.

On occasion, VSRs will be dispatched to assist victims of property and financial crime, especially if the victim is particularly vulnerable. An example would be an elderly or disabled victim. The District Attorney currently does not have, and does not anticipate having, resources to assist with most misdemeanor or felony cases involving property loss, fraud, theft, burglary, and other low level offenses that are non-violent.

The District Attorney's Office is in the process of hiring new VSRs and will be assigning two VSRs approved in the 2015-2016 budget to fill the identified gap in services for fraud, scam, and financial crime victims. The new Financial and Fraud Crimes Victim Services Unit will be assigned to work closely with specialized fraud divisions and prioritize cases *involving substantial losses*. These cases are not anticipated to include matters falling within the Prop 47 threshold of loss totaling less than \$950.

Recently, the BVS received 1.5 million dollars in grant augmentation funds. This augmentation is mostly derived from VOCA funding to the State of California and is funneled to county victim service programs through CalOES. The augmentation was designated to be used for direct services for victims of violence and threats of violence. CalOES provides the required match for these VWAP funds from the State Restitution Fund. Consequently, there is no real ability to service non-violent crime victims using these funds. CalOES expects the counties to follow the VOCA guidelines for service delivery. Victim services funding allocations to the counties are based on violent crime levels. Virtually all CalOES victim service funding is contingent upon usage of VOCA criteria and is not available to underpin services to victims of misdemeanors under the Prop 47 misdemeanor categories.

When restitution is not able to be fully enforced by the bench officer during the time the defendant is on supervision (when probation is to be terminated with restitution continuing to be owed to the victim), the court order can only then be enforced in civil court and it becomes incumbent upon the victim to civilly enforce the order. Furthermore, three recent cases in California Courts have held that if restitution is not ordered when the defendant is on supervision, the victim cannot return to the criminal court and obtain a restitution order. (*People v. Waters* (2015) 2015 Cal. LEXIS 949 [A143557]; *People v. Ford* (2015) 61 Cal. 4th 282; *People v. Hilton* (2014) 224 Cal. App. 4th 47). When Prop 47 increased the pool of misdemeanants, it also decreased the amount of restitution capable of being collected by the Probation Department. Victims of Prop 47 reduced crimes from felonies to misdemeanors are now reduced to enforcement through civil collection remedies established by Penal Code section 1214.

The County is currently developing a restitution collection and distribution system that is working to collect from AB 109 offenders. The Restitution Taskforce has been at work for roughly 18 months. Collection from split sentenced defendants under Penal Code 1170(h) is now occurring. Collection from the Post Release Community Supervision Population is slated to begin in roughly eight weeks. Collection from county jail inmates sentenced pursuant to Penal Code section 2085.5(b) is being worked upon and will likely be realized within 18 months.

Going forward, consideration should be given to a collection system that includes misdemeanor cases as well as felonies. A formalized collection and distribution system that embraces all levels of crime also brings with it the ability to track Prop 47 cases with regard to restitution. The Board of Supervisors could increase the mandate to the Restitution Taskforce to include collection from misdemeanants.

B.

Safeguarding Victims' Rights throughout the Criminal Justice Process: Preventing Further Financial Losses and Emotional Trauma

Victims' financial losses are exacerbated every time they come to court and they may experience additional emotional trauma when they are required to make court appearances to enforce their rights. Bench officers who handle misdemeanor cases are placed in the posture of making restitution orders and then enforcing those orders through continued and repeated court appearances by both victims and defendants in order for there to be an actual restitution payment

to the victim. Defendants bring certified checks to court and hand them over to victims in the presence of the court. Prosecutors and courts cannot accept money from offenders on behalf of victims in order to later give the money to the victims. Judicial officers employ differing practices; sometimes victims are told to “inform the court if the defendant does not pay” which puts the onus on the victim.

Prop 47 victims already have financial losses because of the crime – that is why they need to collect on the restitution order. Coming to court is expensive for victims. Victims are not compensated for their lost wages, transportation, parking, meals or mileage when they come to court to receive restitution. Compelling victims to attend court and incur additional financial cost does not comport with the spirit of the California Constitution and Penal Code statutes which mandate that victims be treated with fairness, respect and dignity. Victims actually lose money every time they participate in the criminal justice process. Victims must take time off from work and/or arrange child care. Victims must either use their sick or vacation time or, if their employer does not provide sick or vacation time, forfeit wages for the day(s) that they come to court. Not only must victims lose wages, they also have to pay money to get to court – either gas money or some other form of transit. Many victims must come to court bringing their minor children, which requires them to pay more than just one fare if they take mass transit. Victims who drive to court must also pay for parking which can be quite expensive. While witnesses who have a subpoena receive free parking in outlying courthouses, there is no free parking for the downtown criminal courthouse where one-third of the criminal cases are handled.

For civilian witnesses, navigating the complicated maze of a criminal case and courthouse is often very confusing. When victims come to court they may be reminded of the crime which can be traumatizing. Often victims must wait, and thus feel like they are wasting their time and being victimized again. Unfortunately, the District Attorney’s Bureau of Victim Services currently does not have, and does not anticipate having, VSRs to assist victims with most misdemeanor or felony cases involving property loss, fraud, theft, burglary, and other low level offenses that are non-violent.

For non-English speaking victims, the experience may be even more challenging as they don’t understand what is happening and no one is there to explain it to them. Courts appoint interpreters for non-English speaking witnesses who are testifying. Courts are not required to appoint, at court expense, an interpreter to explain to a victim what is happening. Victims have a Constitutional Right to be present and be heard during criminal proceedings. Currently, victims who do not speak English do not have a right to have an interpreter to enable them to understand the proceedings. The court is mandated to provide interpreters for criminal defendants so that they can understand and participate in their case.

As stated above, victims of Prop 47 cases would benefit greatly from a formalized restitution collection and distribution system that includes misdemeanor cases as well as felonies. This solution would alleviate some of the additional financial losses and emotional trauma victims suffer associated with having to make multiple court appearances. The Board of Supervisors could increase the mandate to the Restitution Taskforce to include collection from misdemeanants.

Additionally, until a new restitution collection system is in place, and while victims still have to attend court to collect restitution from misdemeanor defendants, their financial losses would be mitigated if the court would pay them witness fees, mileage, parking and other necessary expenses as authorized by Penal Code 1329. Free parking for victims could also be provided for victims who come to the downtown criminal courthouse. Free parking is provided for jurors who are called to jury service downtown. A similar arrangement should be made available for victims. The Board of Supervisors could investigate making arrangements with Court Administrators to also pre-pay parking for victims in criminal cases.

To ensure that victims are treated with fairness, respect and dignity, the Superior Court should receive resources to provide non-English speaking victims in criminal cases with an interpreter so that victims can meaningfully understand and participate in the proceedings. Additionally, the Board of Supervisors could explore assistance from non-profit legal aid or community based organizations which could assist non-English speaking victims with interpreter services in court.

C.

Safeguarding Victims' Rights to Restitution Collection in the Civil Courts

Court ordered restitution is infrequently fully satisfied during the time that a defendant is under the supervision of the Probation Department or the courts. When that happens, victims can resort to civil collection under Penal Code 1214. However, few victims use this way to satisfy a restitution judgment because they are unfamiliar with the court system. Little has been done to assist victims in enforcing their restitution judgment in our local civil courts. The numbers of

victims who will need to enforce civilly has been increased due to the creation of a larger pool of misdemeanants by Prop 47.

Prosecutors may not represent victims in a civil court. Prosecutors obtain court orders on behalf of victims, but they may not engage in civil representation as a matter of law and ethics.

Because of this limitation, serious consideration should be given to the creation of simple information modules to inform crime victims of their ability to civilly collect restitution, which can be available to victims on county and local public and community based organization websites, including the Superior Court and 211 websites. County Counsel could create instructions to aid victims in enforcing civil restitution orders. The Board of Supervisors could increase the mandate of the Restitution Taskforce to include this work. Additionally, the Board of Supervisors could explore assistance from non-profit legal aid or community based organizations which could assist victims in the civil enforcement of restitution orders and collection in the civil courthouses. Similar non-profit agencies staff restraining order clinics at courthouses throughout the county.

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Attachment

ATTACHMENT 1.

County of Los Angeles
Information Systems Advisory Body (ISAB)

Information Systems Advisory Body (ISAB)

Report Title: Proposition 47 Statistics on Victims

Report Date: September 1, 2016

Author: Eugene Cabrera, ISAB, in consultation with Gina Satriano, District Attorney

Number of Potential Victims for Proposition 47 Offenses	
• Number of Cases	335,554
• Number of Charges	627,390

Methodology and Definitions:

1. Proposition 47 offenders are individuals who sustained a Proposition 47 arrest or conviction prior to November 5, 2014.
2. A case with multiple theft charges could involve multiple charges with the same single victim, victimized in a single incident or on multiple incidents on different dates, or could each involve separate victims of a single incident or of multiple incidents on different days.
3. Penal Code Offenses (charges) listed in Appendix A were used to identify a Proposition 47 Case with a potential victim. These theft related Penal Code offenses may include victims who suffered losses but will likely also include cases where there was no victim or where the victims did not suffer losses.
4. The list of offenses used here were developed based on the same set of data used to estimate the number of defendants potentially impacted by Prop 47. It is not always possible to classify or identify the nature of a case based solely on the description of the offense stored in a system. For this reason, the list of offenses used for the Proposition 47 Community Outreach program and for this report were developed only for estimating the number of potential cases and potential defendants and victims.
 - a. Charges searched to generate these statistics include some charges that are not in and of themselves identified as Prop 47 eligible charges, but may have led to convictions that would have qualified as Prop 47 eligible charges;
 - b. The search did not include whether the case involved a prior conviction which would disqualify the person from receiving Prop 47 relief.
5. Charges were counted as 1 Case regardless of the number of charges under the same case even though there may have been multiple potential victims. In other words, if a case had Count 1 of 487 (GRAND THEFT) and Count 2 of 484E (GRAND THEFT ACCESS CARD), they were counted as 1 case.

487 (GRAND THEFT) and Count 2 of 484E (GRAND THEFT ACCESS CARD), they were counted as 1 case.

APPENDIX A: List of Offenses

TYPE	STATUTE	LVL	CJIS_DESCRIPTION
PC	470(A)	F	FORGERY
PC	470(B)	F	FORGERY
PC	470(C)	F	FORGERY
PC	470(D)	F	FORGERY
PC	472	F	FORGERY/COUNTERFEITING OF PUBLIC/CORPORATE SEALS
PC	475(A)	F	POSSESS ITEMS W/INTENT TO FORGE, COUNTERFEIT, ETC
PC	475(B)	F	POSSESS BLANK CHECK, ETC W/INTENT TO COMMIT FORGERY
PC	475(C)	F	POSSESS COMPLETED CHECK, ETC W/INTENT TO COMMIT FORGERY
PC	476(A)	F	
PC	476A(A)	F	PASSING A NONSUFFICIENT FUNDS CHECK >\$950
PC	476A(A)	F	NONSUFFICIENT FUNDS CHECKS
PC	476A(B)	F	PASSING NSF CHECK NOT EXCEEDING \$950 AFTER SPECIFIED PRIOR
PC	476A	F	NSF CHECKS
PC	476A	F	NSF CHECKS
PC	476	F	MAKE/POSSESS/UTTER FICTITIOUS INSTRUMENTS
PC	484(A)	F	THEFT OF PERSONAL PROPERTY
PC	484(A)	F	THEFT OF PERSONAL PROPERTY
PC	484(A)	F	THEFT OF PERSONAL PROPERTY
PC	484(B)	F	THEFT BY NON-RETURN OF RENTAL PROPERTY
PC	484.1(A)	F	FALSE INFORMATION/I.D. TO PAWNBROKER/ETC
PC	484(A)/666	F	
PC	484B	F	DIVERSION OF CONSTRUCTION FUNDS
PC	484C	F	EMBEZZLEMENT OF CONSTRUCTION FUNDS
PC	484E(3)	F	ACQUIRE ACCESS CARD W/INTENT TO DEFRAUD
PC	484E(4)	F	ACQUIRE ACCESS CARD IN 4+ NAMES OVER 12 MONTHS
PC	484E(A)	F	ACQUIRE ACCESS CARD W/INTENT TO DEFRAUD
PC	484E(B)	F	ACQUIRE ACCESS CARD IN 4+ NAMES OVER 12 MONTHS
PC	484E(C)	F	ACQUIRE ACCESS CARD W/INTENT TO DEFRAUD
PC	484E(D)	F	ACQUIRE ACCESS CARD IN 4+ NAMES OVER 12 MONTHS
PC	484E(E)	F	ACQUIRE ACCESS CARD ACCOUNT NUMBER
PC	484E(D)	F	ILLEGALLY POSSESS ACCESS CARD ACCOUNT INFORMATION
PC	484E	F	GRAND THEFT ACCESS CARD
PC	484F(1)	F	FORGE/MAKE/USE OF ACCESS CARD TO DEFRAUD
PC	484F(2)	F	FORGE NAME ON ACCESS CARD
PC	484F(A)	F	FORGE/MAKE/USE OF ACCESS CARD TO DEFRAUD
PC	484F(B)	F	FORGE NAME ON ACCESS CARD
PC	484F(C)	F	ACCESS CARD FORGERY
PC	484G(A)	F	UNLAWFUL USE EXPIRED/FORGED/REVOKED ACCESS CARD

PC	484G(B)	F	PRETEND TO BE CARD HOLDER
PC	484G	F	THEFT OF ACCESS CARD
PC	484H(A)	F	FURNISHING OF GOODS/SERVICES ON CREDIT CARD
PC	484H(B)	F	PRESENT FOR PAYMENT ACCESS CARD SERVICE NOT RENDERED
PC	484I(B)	F	POSSESSION OF MACHINERY FOR MAKING FALSE ACCESS CARD
PC	484I(C)	F	POSSESS, MAKE, ETC EQUIPMENT TO MAKE ACCESS CARD
PC	484I(B)	F	ALTER ACCESS CARD INFORMATION TO DEFRAUD
PC	484	F	THEFT
PC	484	F	THEFT FROM MOTOR VEHICLE
PC	487(A)	F	GRAND THEFT MONEY/PROPERTY/ETC
PC	487(B)(2)	F	GRAND THEFT AQUACULTURAL PRODUCTS
PC	487(B)(3)	F	GRAND THEFT MONEY/LABOR/ETC FROM EMPLOYER VALUE \$400OR MORE
PC	487(B)(1)(A)	F	GRAND THEFT FARM CROPS
PC	487(C)	F	GRAND THEFT PERSON
PC	487(D)(1)	F	GRAND THEFT AUTO/HORSE/ETC
PC	487(D)(2)	F	GRAND THEFT FIREARM
PC	487(D)	F	GRAND THEFT AUTO, FIREARM, ETC
PC	487(D)	F	GRAND THEFT FIREARM/ETC
PC	487.1	F	
PC	487.1	F	
PC	487.2	F	
PC	487.3	F	
PC	487.3	F	
PC	487.3	F	
PC	487A(A)	F	GRAND THEFT ANIMAL CARCASS
PC	487A(B)	F	GRAND THEFT OF A LIVESTOCK CARCASS
PC	487(B)(1)(A)	F	GRAND THEFT FARM CROPS
PC	487B	F	CONVERT REAL PROPERTY W/\$100 OR MORE VALUE
PC	487D	F	GRAND THEFT GOLD DUST/QUICKSILVER/ETC
PC	487E	F	GRAND THEFT DOG
PC	487G	F	STEALING DOG FOR MEDICAL/COMMERCIAL USE
PC	487H(A)	F	GRAND THEFT CARGO
PC	487H(B)	F	GRAND THEFT VEHICLE/VESSEL/ETC W/TWO PRIORS
PC	487H	F	GRAND THEFT VEHICLE/VESSEL/ETC
PC	487	F	
PC	488/666	F	
PC	496(A)	F	RECEIVING KNOWN STOLEN PROPERTY
PC	496(B)	F	DEALER NOT DETERMINING OWNERSHIP
PC	496(C)	F	DEALER NOT DETERMINING OWNERSHIP
PC	496(D)	F	ATTEMPTED RECEIVING STOLEN PROPERTY
PC	496(E)	F	ATTEMPT RECEIVING OF STOLEN PROPERTY
PC	496.1	F	
PC	496.2	F	
PC	496.3	F	
PC	496.5	F	

PC	496A(A)	F	JUNK DEALER RECEIVING WIRE/METAL
PC	496C	F	COPY/ETC REALTY TITLE FROM PRIVATE RECORDS
PC	496D(A)	F	RECEIVE, CONCEAL STOLEN VEHICLE/VESSEL/ETC
PC	496	F	RECEIVE/ETC KNOWN STOLEN PROPERTY
PC	666(A)	F	PETTY THEFT W/SPECIFIC PRIOR
PC	666(B)	F	PRIOR PETTY THEFT - PC290/STRIKE
PC	666.5(A)	F	VEHICLE THEFT W/PRIOR FELONY VC10851/GTA
PC	666.5	F	VEHICLE THEFT W/PRIOR FELONY VC10851/GTA
PC	666.7(A)	F	RECEIVING STOLEN PROPERTY W/TWO PRIORS OF VEH/TRAILER/VESSEL
PC	666	F	PETTY THEFT AFTER THEFT-RELATED CONV & SPECIFIED OTHER CONV
PC	664/472	F	ATTEMPT - FORGERY/COUNTERFEITING PUBLIC/CORPORATE SEALS
PC	664/476A(A)	F	ATTEMPT - NSF CHECKS
PC	664/476	F	
PC	664/484(A)	F	ATTEMPT - THEFT OF PERSONAL PROPERTY
PC	664/484.1(A)	F	
PC	664/484E(3)	F	ATTEMPT ACQUIRE ACCESS CARD W/INTENT TO DEFRAUD
PC	664/484E(A)	F	ACQUIRE ACCESS ARD W/INTENT TO USE/SELL
PC	664/484E(C)	F	ACQUIRE ACCESS CARD W/INTENT TO DEFRAUD
PC	664/484E(D)	F	ACQUIRE ACCESS CARD IN 4+ NAMES OVER 12 MONTHS
PC	664/484E(E)	F	ATTEMPT TO ACQUIRE ACCESS CARD ACCOUNT INFORMATION
PC	664/484F(1)	F	ATTEMPT TO MAKE/FORGE/USE ACCESS CARD TO DEFRAUD
PC	664/484F(2)	F	ATTEMPT - THEFT FORGE NAME ON ACCESS CARD
PC	664/484F(A)	F	ATTEMPT TO FORGE/MAKE/USE ACCESS CARD TO DEFRAUD
PC	664/484F(B)	F	ATTEMPT TO FORGE NAME ON ACCESS CARD
PC	664/484F(C)	F	ATTEMPT ACCESS CARD FORGERY
PC	664/484G(A)	F	ATTEMPT - THEFT: UNLAWFUL USE EXP/FORGED/REV ACCESS CARD
PC	664/484G(B)	F	ATTEMPT THEFT, PRETENDING TO BE CARD HOLDER
PC	664/484G	F	ATTEMPT - THEFT FRAUDULENT USE OF ACCESS CARD
PC	664/484H(A)	F	ATTEMPTED ACCESS CARD THEFT
PC	664/484I(B)	F	ATTEMPT TO ALTER ACCESS CARD INFO TO DEFRAUD
PC	664/484	F	ATTEMPT PETTY THEFT W/PRIOR
PC	664/487(A)	F	ATTEMPT GRAND THEFT MONEY/PROPERTY/ETC
PC	664/487(B)(1)(A)	F	ATTEMPT GRAND THEFT FARM CROPS EXCEEDING \$100 VALUE
PC	664/487(B)(3)	F	ATTEMPT GRAND THEFT FROM EMPLOYER VALUE \$400+
PC	664/487(C)	F	ATTEMPT GRAND THEFT PERSON
PC	664/487(D)	F	ATTEMPT GRAND THEFT FIREARM/ETC
PC	664/487.1	F	
PC	664/487.2	F	
PC	664/487.3(A)	F	
PC	664/487.3(A)	F	
PC	664/487.3	F	
PC	664/487.3GTA	F	

PC	664/487.3	F	
PC	664/487A(A)	F	ATTEMPTED GRAND THEFT ANIMAL CARCASS
PC	664/487A	F	ATTEMPT - GRAND THEFT ANIMAL CARCASS
PC	664/487B1A	F	
PC	664/487E	F	
PC	664/487H(A)	F	ATTEMPT GRAND THEFT VEHICLE/VESSEL/ETC
PC	664/487H(B)	F	ATTEMPT GRAND THEFT VEHICLE/VESSEL/ETC W/TWO PRIORS
PC	664/487H	F	ATTEMPTED GRAND THEFT VEHICLE/VESSEL/ETC
PC	664/487	F	ATTEMPT - GRAND THEFT
PC	664/496(A)	F	ATTEMPT RECEIVING KNOWN STOLEN PROPERTY
PC	664/496.1	F	
PC	664/496A(A)	F	ATTEMPT - RECEIVING STOLEN PROPERTY
PC	664/496	F	
PC	664/666	F	ATTEMPT - PETTY THEFT W/PRIOR PETTY/GRAND/AUTO/BURG/ROBBERY
PC	484(A)	F	THEFT OF PERSONAL PROPERTY
PC	484F(A)	F	FORGE/MAKE/USE OF ACCESS CARD TO DEFRAUD
PC	487(A)	F	GRAND THEFT MONEY/PROPERTY/ETC
PC	487(D)	F	GRAND THEFT AUTO, FIREARM, ETC
PC	12022.7/459	F	ENHANCEMENT: BURGLARY W/GBI
PC	182(A)(1)/484(A)	F	CONSPIRACY TO COMMIT PETTY THEFT
PC	459	F	BURGLARY FROM VEHICLE
PC	459.5	F	SHOPLIFTING AFTER SPECIFIED PRIOR CONVICTION
PC	459/12022.5	F	BURGLARY W/FIREARM
	470(A)&473(A)		
	470(A)&473(B)		
	470(B)&473(A)		
PC	476A(B)	F	PASSING NSF CHECK NOT EXCEEDING \$950 AFTER A SPECIFIED PRIOR
PC	484(B)(1)	F	THEFT BY NON-RETURN OF RENTAL PROPERTY
PC	487(D)(1)	F	GRAND THEFT OF AN AUTOMOBILE
PC	487(I)	F	
PC	487A(C)	F	GRAND THEFT OF LIVESTOCK CARCASS KILLED WITHOUT CONSENT
PC	487I	F	DEFRAUD PUBLIC HOUSING AUTHORITY
PC	487J	F	THEFT OF COPPER MATERIALS
PC	503/487(D)	F	
PC	503/487(D)(1)	F	
PC	664/484F	F	ATTEMPT - THEFT FORGE ACCESS CARD
PC	664/487(B)(2)	F	ATTEMPT GRAND THEFT AQUACULTURAL PRODUCTS EXCEEDING \$400 VAL
PC	664/487(D)(1)	F	GRAND THEFT VEHICLE/HORSE/ETC
PC	666(B)(1)	F	
	470(B)&473(B)		
	470(D)&473(A)		
	470(D)&473(B)		

	475(A)&473(A)		
	475(A)&473(B)		
	475(B)&473(A)		
	475(B)&473(B)		
	475(C)&473(A)		
	475(C)&473(B)		
	476&473(A)		
	476&473(B)		
	484(A)&490.1		
	484(A)&490.2		
	484(A)&490.2&666		
	484.1&487(A)		
	484.1&490.2		
	485&487(A)		
	485&490.2		
	504&487(A)		
	504&490.2		
	504&514		
	504A&487(A)		
	504A&490.2		
	664/11350		
	664/476A(B)		
	664/484(A)&490.1		
	664/484(A)&490.2		
	664/484(A)&PT&666		
PC	459(A)	F	
PC	459(N)	F	
PC	459(R)	F	
PC	459-460(A)	F	
PC	459-460(B)		
PC	459.2	F	
PC	664/459	F	ATTEMPTED BURGLARY FROM VEHICLE
PC	664/459/12022.5	F	ATTEMPT - BURGLARY W/FIREARM

ATTACHMENT 2.

General Office Memoranda

GOM – 14-099 – Proposition 47, Supplement 1, November 5, 2014

- Appendix A – Detailed Description of Prop 47 Changes
- Appendix B – “Marsy’s Law” Victim Notification Letter to Victims Re: Prop 47
- Appendix C – List of “Superseding Priors”

GOM – 14-102 – Proposition 47, Supplement 2, November 7, 2014


- Appendix A – “Marsy’s Law” Victim Notification Letters to Victims Re: Prop 47
- Appendix B – Recall and Resentencing of Prisoners
- Appendix C – Applications for Post-Sentence Reduction

GOM – 15-013 – Proposition 47, Supplement 3, February 18, 2015

- Appendix A – List of “Superseding Priors”

GENERAL OFFICE MEMORANDUM 14-099

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: SHARON J. MATSUMOTO 
Chief Deputy District Attorney

SUBJECT: PROPOSITION 47, Supplement 1

DATE: NOVEMBER 5, 2014

Special Directive 14-08 summarized the sweeping changes made by Proposition 47 (Prop 47), which was enacted by the voters on November 4, 2014. It also directed how misdemeanor prosecutions are to be handled when a city prosecutor would otherwise have the authority to file and prosecute those cases.

The purpose of this additional Memorandum is to provide specific guidance to Deputy District Attorneys for various issues that will likely arise in the wake of Prop 47. A more detailed discussion of the affected charges is included in Appendix A in order to give more guidance and provide strategies for effectively charging and prosecuting felony crimes, where warranted.

UPDATE PLEADING LANGUAGE

Prop 47 added additional elements for the affected felony offenses, mostly requiring a threshold dollar amount or a prior conviction. Pleadings should be updated where appropriate. The Uniform Crime Charging Manual (UCCM) and PIMS is being updated with the appropriate new charging language for each of the affected crimes, for both adult and juvenile operations. There is also a new cross-designated deputy complaint form available in PIMS as a pull-down option, for city prosecutor misdemeanors filed by our deputies in their roles as cross-designated city prosecutors during the interim period through January 31, 2015. This complaint form prominently states at the top that the case is a city prosecutor case which will be handled by a Deputy District Attorney who is cross-designated as a city prosecutor. So that these cases can be properly assigned to a courtroom staffed by our lawyers, supervisors should ensure that any complaint filed on behalf of the Long Beach City Prosecutor or the Los Angeles City Attorney by our deputy uses this new complaint form and is assigned a city attorney case number by the court.

ANTICIPATED 995 MOTIONS

Many charges currently filed as felonies involve theft/forgery/stolen property actually valued over \$950, but since a specific value was not previously required, the preliminary hearing may not contain the necessary evidence of value. The defense may therefore bring a 995 motion.

Consider the following:

- If a dollar amount over \$950 can be proved by putting on additional evidence, move to put on additional evidence of value pursuant to Penal Code § 995a(b)(1). (See *Caple v. Superior Court* (1987) 195 Cal.App.3d 594.)
- A change in the law may allow us to prove the newly added elements at trial. (See *People v. Figueroa* (1993) 20 Cal.App.4th 65.) Ask the court to proceed to trial notwithstanding the lack of certain elements in the preliminary hearing, and make a record of supporting facts to show our good faith.
- If the court does not allow additional testimony, the court may be inclined to reduce the affected charge to a misdemeanor. Deputies should then evaluate whether to accept the misdemeanor, or to dismiss and refile the case to prove the dollar amount. If this would be a second dismissal under Penal Code § 1387, contact the Appellate Division for guidance on how to proceed.

VICTIM NOTIFICATION

Notifications to named victims, pursuant to Marsy's Law, must be made on all cases impacted by Prop 47 that result a reduction to a misdemeanor. (Cal. Const., Art. I, § 24.) A "Victim Notification Letter" template is included as Appendix B.

RESCISSION OF PLEA BARGAIN

In some cases, a defendant's conviction for an offense now made a misdemeanor under Prop 47 was the result of a negotiated case settlement. The defendant may have been sentenced to substantial custody time in exchange for a reduction of the charges. For example, a defendant charged with robbery could have pleaded guilty to a grand theft person, perhaps with substantial prison time. Automatically reducing this charge to a misdemeanor may undermine our bargained-for sentence, particularly if there was a prior strike.

If a defendant moves to modify the sentence pursuant to Prop 47, we may be able to rescind the plea bargain and restore the charges in appropriate cases. This effort should be undertaken in rare instances, such as when the terms of the case settlement would be undermined or when the defendant pled guilty or no contest but has not yet been sentenced. As the original charges would be restored, the decision to seek rescission of a plea agreement must also consider whether we are still able to prosecute the case successfully.

Plea bargains should implement the reasonable expectations of the parties. (*People v. Vargas* (1990) 223 Cal.App.3d 1107, 1112.) The trial court cannot modify a plea agreement without the consent of both parties. (*People v. Segura* (2008) 44 Cal.4th 921, 931.) "Because a 'negotiated plea agreement is a form of contract,' it is interpreted according to general contract principles." (*Id.* at p. 930.) "A party to a contract may rescind it if consent to the contract was given by mistake or if consideration for the contract fails in a material respect." (*People v. Superior Court (Sanchez)* (2014) 223 Cal.App.4th 567, 573.) In cases where the plea agreement is undone, the court may also restore the original charges. (See *In re Sutherland* (1972) 6 Cal.3d 666, 672.)

SENTENCING

Other than Penal Code §§ 459.5 and 490.2, which are misdemeanors punishable pursuant to Penal Code § 19, the misdemeanors created by Prop 47 carry a term of up to one year in county jail. Prop 47 —affected crimes committed by defendants who have previously been convicted of a Superseding Prior continue to be punishable by state prison terms under Penal Code § 1170(h)(3).

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Attachments

APPENDIX A

DETAILED DESCRIPTION OF PROP 47 CHANGES

Drug Possession

The changes to Health and Safety Code §§ 11350, 11359(a) [concentrated cannabis], and 11377 make these crimes misdemeanors.

Other drug-related crimes — including sales, possession for sales, transportation, and possession of narcotics while armed with a firearm -- remain unchanged.

Forgery Crimes

Prop 47 amended Penal Code § 473, the punishment section for forgery. The amendment added a new subdivision (b), and designated the former statute as subdivision (a). Forgery is generally a wobbler under subdivision (a), but subdivision (b) makes the offense a misdemeanor punishable by one year in county jail if the forgery "relat[es] to a check, bond, bank bill, note, cashier's check, traveler's check, or money order" where the value does not exceed \$950. The amendment explicitly states that subdivision (b) (defining misdemeanors) does not apply to a person who is convicted of both forgery and identity theft (Penal Code § 530.5).

Other criminal offenses, such as identity theft and false personation (Penal Code § 529), continue to be wobblers and should be considered as alternatives to forgery charges, when appropriate. Forgeries unrelated to checks and related instruments also remain wobblers, regardless of the dollar amount. Some crimes relating to credit cards are designated "forgery" (Penal Code §§ 484f, 484i), and are therefore unaffected. Furthermore, Penal Code § 470(d) lists several types of instruments other than those listed in amended Penal Code § 473(b).

Insufficient Funds (NSF) Checks

Prop 47 amended Penal Code § 476a(b) to change the dollar amount for a felony violation from over \$450 to over \$950. It also changed the ability to charge a felony where the defendant has one prior conviction for a similar offense to require three prior convictions. The qualifying priors have not changed. Prior convictions may be for the same section (Penal Code § 476a), for forgeries under Penal Code §§ 470, 475, or 476, or for a petty theft that was also a violation of those sections.

The changes to this section are similar to changes made a few years ago to many theft crimes (from \$400 to \$950 for grand theft), and to prior legislative changes to Penal Code § 666. Deputies should be mindful of the new pleading and proof requirements at preliminary hearing and trial.

"Shoplifting"

Prop 47 added Penal Code § 459.5, which defines the new crime called "shoplifting." The crime is defined as entering a commercial establishment with the intent to commit a "larceny while that establishment is open during regular business hours," where the value of the property taken or intended to be taken does not exceed \$950. The change does not affect auto burglary, entering any structure other than a commercial establishment, or entering a store after business hours (e.g., breaking in at night).

By the terms of § 459.5(b), shoplifting may not concurrently be charged with burglary or theft of the same property. As shoplifting and petty theft (Penal Code § 484) are each punishable by up to six months in county jail, and shoplifting is more difficult to prove, deputies should elect to charge petty theft in the vast majority of cases in which an election must be made. Defendants who have been convicted of a Superseding Prior (see Appendix C) but have not been convicted of a theft-related offense that can be alleged pursuant to Penal Code § 666(a) (see Petty Theft with Prior Convictions, below) may be charged with felony shoplifting. In light of the newly created § 490.2 (see Petty Theft with a Superseding Prior, below), felony shoplifting appears to be a practical alternative only when the value of the property is \$50 or less.

Receiving Stolen Property

Prop 47 amended Penal Code § 496(a) to make receiving stolen property a misdemeanor where the property does not exceed \$950 in value. It otherwise remains a wobbler. As receiving or withholding multiple pieces of property at the same time amounts to one count of receiving stolen property, the value of the property may be aggregated. (See *People v. Mitchell* (2008) 164 Cal.App.4th 442, 461-462.)

Petty Theft with a Superseding Prior

Prop 47 created a new statute, Penal Code § 490.2, which both redefines the crime of Grand Theft (discussed below) and creates a new crime: Petty Theft with a Superseding Prior. A defendant who commits a petty theft and has previously been convicted of a Superseding Prior may now be charged with a felony if the value of the property is over \$50. (Penal Code § 490.2 prohibits a felony charge when the current theft offense can alternatively be charged as an infraction pursuant to Penal Code § 490.1.)

Petty Theft with Prior Theft Convictions

The crime of petty theft with priors has been eliminated for the vast majority of offenders, applying now only to defendants with a Superseding Prior or a financial elder abuse prior. The offense, which continues to be a wobbler, may be charged when the defendant has sustained just one conviction for a theft or theft-related offense.

Prop 47 eliminated former subdivision (a) of Penal Code § 666, which had allowed felony charges where the defendant had three or more theft priors. Newly designated subdivision (b) limits the availability of the potential charge to defendants who have been convicted of either a Superseding Prior or a financial crime against an elderly victim (Penal Code § 368(d) or (e)).

Grand Theft

Penal Code § 490.2 has redefined petty theft as any theft where the value of the money, labor, or property taken does not exceed \$950, "[n]otwithstanding Section 487 or any other provision of law defining grand theft." As such, all grand thefts require proof that the amount stolen was over \$950.

This sweeping change would therefore affect agricultural forms of grand theft (Penal Code § 487(b)), thefts from the person (Penal Code § 487(c)), grand theft auto (Penal Code § 487(d)(1)), grand theft firearm (Penal Code § 487(d)(2)), and grand theft based on obtaining access card information (Penal Code § 484e(b), (d)).

Proving Value Generally

It should be remembered that the value of the property at issue in multiple petty theft offenses may be aggregated to form a single grand theft if committed as part of a single plan. (*People v. Bailey* (1961) 55 Cal.2d 514, 519.) Also, Vehicle Code § 10851 is unaffected, and should be considered when felony charges are warranted for vehicle theft.

Consider the following Evidence Code provisions when proving value:

- Commercial compilations relied upon in the ordinary course of business are admissible hearsay. (Evidence Code § 1340.) Appropriate authorities include the Kelly Blue Book, as well as various trade publications used in various businesses. Testimony on the source may be required to show it is regularly relied upon. Foundation will also be required to show that the property stolen is comparable to the item identified in the publication.
- Property owners may express opinions about value, and rely on reasonable sources. (Evidence Code §§ 813, 814.)
- Sales of comparable items are also admissible to show value. (Evidence Code § 816.) If foundational requirements can be satisfied, sales prices set by merchants may be useful, either to bolster an owner's opinion or as independent evidence of an item's value.
- Consider expert testimony on valuation (Evidence Code § 813.) Since many guns will individually be valued at under \$950, felony charges for this offense will now often be available only if the defendant is responsible for the thefts of multiple guns. Worthy of note, felony grand theft of a firearm remains a strike (Penal Code § 1192.7(c)(26)).

APPENDIX B

Date

Victim's Name
Address
City, State 9XXXX

People v. John Doe CASE # XXXXXX

Dear Mr./Ms. Victim:

Our records indicate that you are a named victim in the above criminal prosecution. On November 4, 2014, the California voters passed Proposition 47, which became effective immediately. **This new law requires that the above crime, previously charged as a felony, must now be charged as a misdemeanor. This changes the sentence that the defendant can receive, if convicted of the charges. [and also, the prosecutor's office handling the case, which is now the _____.]**

As a victim, you have rights. These rights include being kept informed about; present; and/or heard at any court hearing. However, you will need to request these rights. If the defendant is convicted, you have a right to have the court order restitution for certain financial losses incurred from the crime. If you want to request any of your rights, complete the back of this letter; and send it to the listed prosecutor's office after "Mail to."

Criminal cases may proceed quickly to disposition as early as defendant's arraignment or first court date(s). Thus, the sooner you make your requests known, the more likely they can be honored. Should you have any questions about how to exercise your rights, contact the: **Victim Witness Assistance Program (VWAP) at 1-800 380-3811**, for assistance.

Very truly yours,

JACKIE LACEY
District Attorney

By

DDA NAME

PEOPLE VS _____ CASE # _____

VICTIM RIGHTS REQUEST(S):

_____, a victim in the above entitled matter, by myself or through my representative, request the following regarding my rights (please check where applicable):

- ☐ To be notified of the scheduled proceedings.
- ☐ To be present at the proceedings. (I will attend some or all of the proceedings. Please give me notice of scheduled proceeding dates and continuances.)
- ☐ To be heard at the proceedings. (I wish to speak before the judicial/hearing officer, where appropriate.)
- ☐ To make a statement to be considered at sentencing, if the defendant is convicted:
 - ☐ Written (attach to this letter)
 - ☐ Verbal to the District Attorney, please call me at: _____
 - ☐ Other (tape, video, etc) _____
- ☐ To an order of restitution, if the defendant is convicted, for financial losses incurred from the crime in the amount of: \$_____ (The court may require documentation of losses at a hearing; so have it available; and certain losses, like mental suffering, may not be eligible.)
- ☐ I wish to have no further involvement in this case.

Signature

Date:

Representative's Name and Relationship, if applicable _____

MAIL TO:

(Prosecutor's Office Name; Address)

APPENDIX C

List of "Superseding Priors" [Offenses in PC 290(c) and PC 667(e)(2)(C)(iv)]

- * An attempt also constitutes a Superseding Prior
- e When enhanced by PC 186.22(4)
- q The Superseding Prior may be a felony or misdemeanor conviction

PC 37	Treason
PC 128	Perjury causing execution of an innocent person
PC 136.1 ⁸	Intimidation of a witness, <i>with gang enhancement</i>
PC 182	Conspiracy to commit life crime or PC 290 offense
PC 187*	Murder
PC 191.5(a)*	Gross vehicular manslaughter while intoxicated
PC 191.5(b)*	Vehicular manslaughter while intoxicated (formerly PC 192(c)(3))
PC 205	Aggravated mayhem
PC 207* ¹	Kidnapping, <i>If with intent to commit a sex offense</i>
PC 209	Aggravated kidnapping
PC 209.5	Kidnapping in the commission of carjacking
PC 213(a)(1)(A)e	Home invasion robbery, <i>with gang enhancement</i>
PC 215 ⁸	Carjacking, <i>with gang enhancement</i>
PC 217.1	Attempted murder of a government official
PC 218	Train wrecking
PC 219	Train derailing
PC 220* ²	Assault with intent to commit sex crime
PC 236.1*, subds. (b), (c)	Human trafficking
PC 243.4* ⁴	Sexual battery
PC 245(d)(3)	Assault on a peace officer or firefighter
PC 246 ⁸	Shooting at inhabited dwelling/occupied car, <i>with gang enhancement</i>
PC 261(a)*, subds. (1), (2), (3), (4), (6)	Rape
PC 262(a)* ³	Spousal rape

¹ See PC 290(c) and WI 6600(b) for applicable sex offenses

² Other than assault with intent to commit mayhem

³ An attempt constitutes a Superseding Prior only if the defendant was imprisoned on the charge

PC 266c ^{*4}	Inducing sex act by fear
PC 266h(b)*	Pimping involving a minor
PC 266i(b)*	Pandering involving a minor
PC 266j*	Providing a child for a lewd act
PC 267*	Abducting a minor for prostitution
PC 269*	Aggravated sexual assault of a child
PC 272' ⁴⁴	Contributing to the delinquency of a minor
PC 273ab	Assault on a child, resulting in death
PC 285*	Incest
PC 286' ⁴⁵	Unlawful sodomy
PC 288*	Lewd or lascivious act on a child
PC 288a'	Unlawful oral copulation
PC 288.2*	Providing harmful material to a minor for seduction
PC 288.3*	Communicating with a minor with sexual intent
PC 288.4' ⁴	Arranging meeting with a minor with sexual intent
PC 288.5*	Continuous lewd or lascivious acts with a child
PC 288.7*	Sex act with a child
PC 289' ⁴⁷	Unlawful sexual penetration
PC 311.1 ⁴	Pornography involving a minor, with intent to distribute
PC 311.2' ⁴ , subds. (b), (c), (d)	Pornography involving a minor, for commercial purposes
PC 311.3'	Sexual exploitation of a minor
PC 311.4' ⁴	Using a minor to pose for pornography
PC 311.10' ⁴	Advertising pornography involving a minor
PC 311.11' ⁴	Possession of pornography depicting a minor
PC 314' ⁴ , subds. (1), (2)	Indecent exposure
PC 451.5	Aggravated arson
PC 519 e	Extortion, with gang enhancement

⁴¹If the offense involved lewd or lascivious intent

⁴ As to PC 286(b)(1), mandatory lifetime sex offender registration has been found unconstitutional on equal protection grounds (*People v. Thompson* (2009) 177 Cal.App.4th 1424).

⁴ As to PC 288a(b)(1), mandatory lifetime sex offender registration has been found unconstitutional on equal protection grounds (*People v. Hofsheler* (2007) 37 Ca1.4th 1185), and as to PC 288a(e) (*People v. Ruffin* (2011) 200 Cal.App.4th 669). Appellate courts have disagreed as to whether mandatory registration for a violation of PC 288a(b)(2) is constitutional. (Compare *People v. Garcia* (2008) 161 Cal.App.4th 475; *People v. Hernandez* (2009) 166 Cal.App.4th 641; and *People v. Luansing* (2009) 176 Cal.App.4th 676; with *People v. Manche!* (2008) 163 Ca1.App.4th 1108).

⁴⁷ As to PC 289(h), mandatory lifetime sex offender registration has been found unconstitutional on equal protection grounds (*People v. Ranscht* (2009) 173 Cal.App.4th 1369).

PC 647.6⁴ PC

653f(b) PC

653f(c)* PC

667.61 PC 667.7

PC 667.71 PC

4500 PC

11418(b), subds.

(1), (2) PC

12022.55⁸

PC 18745*

PC 18755

MV 1672(a)

Annoying/Molesting a minor (formerly PC 647a)

Solicitation to commit murder

Solicitation to commit a specified sex crime

Sex crime, with aggravating factor ("one strike" offenses)

Habitual offender causing GBI

Habitual sex offender

Assault by a life prisoner on a non-inmate

Using a weapon of mass destruction

Shooting from a car, causing GBI, *with gang enhancement*


Exploding a destructive device with intent to murder (formerly PC 12308)

Exploding a destructive device causing GBI (formerly PC 12310)

Military sabotage

GENERAL OFFICE MEMORANDUM 14-102

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: SHARON J. MATSUMOTO 
Chief Deputy District Attorney

SUBJECT: PROPOSITION 47, Supplement 2

DATE: NOVEMBER 7, 2014

Recently enacted Proposition 47 (Prop 47) made sweeping changes to drug possession and theft-related crimes, which were described in GOM 14-099. Prop 47 also added Penal Code § 1170.18, which gives previously convicted offenders two ways to modify their prior convictions for specified offenses and receive misdemeanors under the new laws.

Offenders currently serving a sentence for an offense that would have been a misdemeanor under Prop 47 may petition for resentencing. Unless our Office can show that an inmate poses an unreasonable risk of danger to public safety, which under Prop 47 is narrowly defined, the prisoner will be resentenced and the conviction will become a misdemeanor for all purposes. Importantly, resentencing does not permit an inmate to own or possess a firearm, and the charge for which an offender is resentenced may still be the basis for a subsequent violation of Penal Code § 29800 (felon with a firearm). (Penal Code § 1170.18(k).)

Offenders who have completed their sentences may also apply to have their felony convictions reduced to misdemeanors. If granted, the conviction becomes a misdemeanor for all purposes, except firearm possession.

Defendants who have been convicted of a "Superseding Prior" are expressly ineligible for either resentencing or post-sentence reduction under Prop 47. A list of Superseding Priors has been included as appendices to Special Directive 14-08 and GOM 14-099.

Petitioners who are currently serving sentences should not be granted relief before a deputy has received written notice of the request for resentencing, is provided an opportunity to be heard as to both eligibility and suitability, and has fully complied with Marsy's Law obligations. (See *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1297 ["principles of due process . . . demand that the prosecution be given notice and an opportunity to be heard in response to a petition for resentencing"].)

In contrast, courts are not statutorily required by Prop 47 to calendar hearings in response to post-sentence applications for reduction. (Penal Code § 1170.18(h).) Nevertheless, in each such case, deputies should request an opportunity to review the District Attorney's Office case file

and generate a current version of the applicant's criminal history to ascertain whether the applicant is eligible for resentencing in light of the value of the property at issue and the possibility that he or she has been convicted of a disqualifying offense.

Petitions for resentencing and applications for reduction under Prop 47 will generally be filed and heard in the courthouse in which the petitioner was originally sentenced. However, if a third-strike sentence was imposed, and the petitioner either has been denied resentencing under Proposition 36 (Penal Code § 1170.126) or has a pending petition for resentencing under Proposition 36, the Prop 47 petition will instead be heard in Department 56 of the Foltz Criminal Justice Center. The Third Strike Resentencing Unit (TSR), which operates within the Post-Conviction Litigation and Discovery Division, has created a list of Proposition 36 petitioners whose Prop 47 petitions should be sent for handling to the TSR Unit. That list has been provided to the Head Deputies of the branch locations responsible for the underlying cases.

On the other hand, defendants who have already been resentenced under Proposition 36 and released from prison may subsequently petition for reduction of charges under Prop 47. These petitions will be handled in the courthouse where sentence was originally imposed. In such cases, deputies are encouraged to contact the TSR Unit, where the original District Attorney's Office case files on all former Proposition 36 matters are presently maintained.

While a supervisor may elect to assign one or more deputies to specially handle all Prop 47-affected resentencing petitions and applications for reduction in a given courthouse, all courtroom deputies should be prepared to handle post-sentence applications. Deputies should remain mindful of victims' constitutional rights to receive notice and to be heard, under Marsy's Law, at any proceeding that involves sentencing, a post-conviction release decision, or the scheduled release date — particularly in Prop 47 cases in which a civilian witness has expressly asked to be informed of any such events. (Cal. Const., Art. I, § 28(a), subds. (7), (8), (12); Penal Code § 1170.18(o).) A two-page victim "Victim Notification Letter" template is included in this GOM as Appendix A.

Comprehensive discussions of the resentencing provisions of Prop 47, and guidelines as to how deputies should handle affected cases, are attached as appendices to this GOM. Appendix B provides analysis and direction in cases in which a defendant currently serving a sentence on a Prop 47-affected sentence has petitioned for a reduction of a felony to a misdemeanor. Appendix C provides analysis and direction in cases in which a defendant who has already completed an imposed sentence has applied for a reduction of a felony to a misdemeanor.

m b

Attachments

APPENDIX A

Date

Victim's Name

Address

City, State 9XXXX

People v. John Doe CASE # XXXXXX

Dear Mr./Ms. Victim:

Our records indicate that you are a named victim in the above criminal prosecution. On November 4, 2014, the California voters passed Proposition 47, which became effective immediately. **This new law requires that the above crime, previously charged as a felony, must now be charged as a misdemeanor. This changes the sentence that the defendant can receive, if convicted of the charges. [and also, the prosecutor's office handling the case, which is now the _____ .1**

As a victim, you have rights. These rights include being kept informed about; present; and/or heard at any court hearing. However, you will need to request these rights. If the defendant is convicted, you have a right to have the court order restitution for certain financial losses incurred from the crime. If you want to request any of your rights, complete the back of this letter; and send it to the listed prosecutor's office after "Mail to."

Criminal cases may proceed quickly to disposition as early as defendant's arraignment or first court date(s). Thus, the sooner you make your requests known, the more likely they can be honored. Should you have any questions about how to exercise your rights, contact the: **Victim Witness Assistance Program (VWAP) at 1-800 380-3811**, for assistance.

Very truly yours,

JACKIE LACEY
District Attorney

By

DDA NAME

PEOPLE VS _____ CASE # _____

VICTIM RIGHTS REQUEST(S):

I, _____, a victim in the above entitled matter, by myself or through my representative, request the following regarding my rights (please check where applicable):

- ☐ To be notified of the scheduled proceedings.
- ☐ To be present at the proceedings. (I will attend some or all of the proceedings. Please give me notice of scheduled proceeding dates and continuances.)
- ☐ To be heard at the proceedings. (I wish to speak before the judicial/hearing officer, where appropriate.)
- ☐ To make a statement to be considered at sentencing, if the defendant is convicted:
 - ☐ Written (attach to this letter)
 - ☐ Verbal to the District Attorney, please call me at: _____
 - ☐ Other (tape, video, etc) _____
- ☐ To an order of restitution, if the defendant is convicted, for financial losses incurred from the crime in the amount of: \$ _____ (The court may require documentation of losses at a hearing; so have it available; and certain losses, like mental suffering, may not be eligible.)

- ☐ I wish to have no further involvement in this case.

Signature

Date:

Representative's Name and Relationship, if applicable _____

MAIL TO:

(Prosecutor's Office Name; Address)

Date

Victim's Name

Address

City, State 9XXXX

People v. John Doe CASE #)0CX)00C

Sr. /Sra. Victima:

Nuestros registros indican que usted es una victima nombrada en la persecucion penal anterior. En Noviembre 4, 2014, los votantes de California aprobaron la Propuesta 47, que entró en vigor inmediatamente. **Esta nueva ley requiere que el delito anterior, previamente cargado como un delito grave, ahora debe cargarse como un delito menor. Esto cambia la condena que el acusado pueda recibir, si es declarado culpable de los cargos. (y tambien, la oficina del fiscal de la causa, que se encuentra ahora en el _____ .)**

Como una victima, usted tiene derechos. Estos derechos incluyen ser informado; presente; y/o escuchado en cualquier audiencia de la corte. Sin embargo, tendra que solicitar estos derechos. Si el acusado es condenado, usted tiene el derecho a que el tribunal ordene la restitution de ciertas perdidas financieras derivados del crimen. Si desea pedir cualquiera de sus derechos, complete la parte de atras de esta carta; y enviarla a la oficina del fiscal que aparece despues de " Enviar A".

Casos criminales pueden proceder rapidamente a la disposicion tan pronto como en la comparecencia del acusado o primeras citas de corte. Asi, en cuanto más pronto hace sus solicitudes conocidas, lo más probable que puedan ser honradas. Si tiene alguna pregunta sobre como ejercer sus derechos, póngase en contacto con el: **Programa De Asistencia Para Victimas y Testigos (VWAP) al 1-800-380-3811**, para obtener asistencia.

Muy atentamente,

JACKIE LACEY
Fiscal del Distrito

Por

DDA NAME

APPENDIX B

RECALL AND RESENTENCING OF PRISONERS

- Any person serving a sentence for a felony which would now be a misdemeanor under Prop 47 may petition for a recall of sentence. (Penal Code § 1170.18(a).)
- The petition is to be filed in the same court that entered the judgment (§ 1170.18(a)), or another judge designated by the presiding judge if the original judge is not available (§ 1170.18(l)).
- The court shall grant the petition, recall the sentence, and resentence the defendant unless resentencing the prisoner "would pose an unreasonable risk of danger to public safety." (§ 1170.18(b).)
- An "unreasonable risk of danger to public safety" is narrowly defined as "an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667." (§ 1170.18(c).) The crimes that have been identified as Superseding Priors includes both the offenses listed in Penal Code § 667(e)(2)(C)(iv) and crimes enumerated in Penal Code § 290(c). Arguments regarding dangerousness must be premised on a violent felony in the subset of crimes identified in Penal Code § 667(e)(2)(C)(iv) rather than on an offense more broadly identified as a Superseding Prior.
- For dangerousness, the court may consider the prisoner's prior conviction history, the circumstances of those crimes, the prisoner's record while in prison, and anything else that may be relevant. (§ 1170.18(b)(1)—(3).)
- If resentenced, the conviction will be a misdemeanor for all purposes, except firearm possession under Penal Code § 29800. (§ 1170.18(k).)
- The person will be subject to parole for one year, unless the court releases the person from parole. (§ 1170.18(d).)
- The petition for resentencing must be filed within three years, or later upon a showing of good cause. (§ 1170.18(j).)
- Resentencing hearings constitute proceedings within the meaning of Marsy's Law. (§ 1170.18(o).)
- Prisoners with Superseding Priors, including offenses requiring registration pursuant to Penal Code § 290(c), are not eligible to be resentenced under Prop 47. (§ 1170.18(i).)

All resentencing petitions should be handled in open court, on the record. Unless the petitioner has signed a waiver that has been filed with the court, a hearing should not be conducted unless the petitioner is present.

Deputies handling resentencing petitions should:

1. Secure a Copy of the Petitioner's Criminal History

Deputies should carefully review the criminal history of each petitioner who seeks resentencing under Prop 47 to establish whether the petitioner has been convicted of a Superseding Prior. A conviction for a Superseding Prior will render a petitioner ineligible for any relief under Prop 47.

2. Determine the Facts of the Commitment Offense

Anticipated issues of concern in the litigation of Prop 47 cases include: (1) the burden of proof in determining if a petitioner is ineligible for resentencing due to a Superseding Prior; (2) the value of the property at issue in theft-related cases when a reasonable argument can be made by our Office that the loss or value of the property exceeded \$950; (3) whether the petitioner has disqualifying previous convictions, including but not limited to Superseding Priors; and (4) the materials that the court will be permitted to consider in determining a petitioner's criminal history and the value of the property.

The statute itself does not assign a burden of proof to show eligibility for resentencing. The statute states only that "the court shall determine whether the petitioner satisfies the criteria in subdivision (a)." As the statute does not set a burden of proof, the appropriate standard is preponderance of the evidence. (Evid. Code, § 115; *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1040.) There is a colorable argument that the petitioning prisoner has the burden of showing eligibility for resentencing (i.e., that the amount stolen was *not* over \$950, or that the burglary *was* from a store during business hours).¹ However, as a practical matter, the District Attorney's Office is likely to have greater access to the relevant materials, and the court will probably look to us to provide those materials.

The court may consider everything that is part of the "record of conviction" in determining whether a charge remains a felony under Prop 47. (*People v. Guerrero* (1988) 44 Cal.3d 343, 355.) Acceptable materials include preliminary hearing transcripts (*People v. Reed* (1996) 13 Cal.4th 217, 229), appellate opinions (*People v. Woodell* (1998) 17 Cal.4th 448, 457), and probably probation reports prepared *prior* to conviction. (Cf. *People v. Trujillo* (2006) 40 Cal.4th 165, 180 [excluding statements from a probation report prepared after defendant's plea]). By extension, testimony about valuation memorialized in trial transcripts may also be considered. Restitution hearings may also be useful to the extent the value of any property can be distinguished from other matters, as will statements of value in post-conviction probation reports.

3. If the Defendant is Eligible, Determine Whether to Contest Resentencing Based on an Unreasonable Risk of Danger

If the defendant is otherwise eligible for resentencing, then the statute mandates resentencing "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." Unlike eligibility, the prosecution bears the burden of proof in establishing dangerousness, most likely by a preponderance of the evidence. (See *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1301 [interpreting similar language in Penal Code § 1170.126(f)].)

¹"Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (Evidence Code § 500.)

The definition of an "unreasonable risk of danger to public safety" has been narrowly defined, in Prop 47, as a risk to commit various offenses, including murder, vehicular manslaughter while intoxicated, forcible sex crimes, lewd acts upon a child, or a serious felony punishable by life imprisonment. (Penal Code § 667(e)(2)(c)(iv).) Although the petitioner will not have been previously convicted of any of the enumerated crimes — a Superseding Prior that would render a petitioner ineligible for resentencing — evidence may be available to support the prosecution's burden of proof. As an example, an inmate who has a demonstrated propensity to drive while under the influence of alcohol or drugs may be an unreasonable risk to commit a violation of Penal Code § 191.5. (See Vehicle Code § 23593.)

The provisions of Prop 47 that pertain to resentencing petitioners who are currently serving sentences for affected offenses expressly allow for consideration of prison behavior. (Penal Code § 1170.18(b)(2).) In appropriate cases, deputies should consider obtaining prison records by subpoena duces tecum to determine whether an incarcerated petitioner presents an unreasonable risk of danger to public safety.

Victim Notification Letter

A resentencing hearing provided to a petitioner currently serving his or her sentence is a "post-conviction release proceeding" within the meaning of Prop 47 (Cal. Const., Art. I, § 28(a), subds. (7), (8), (12)) and Marsy's Law (Penal Code § 1170.18(o).) Handling deputies should ensure that victims who have expressed an interest in a particular case are sent the two-page victim "Victim Notification Letter" form, which is included as Appendix A.

APPENDIX C

APPLICATIONS FOR POST-SENTENCE REDUCTION

- Defendants who have completed their sentence for a crime that would be a misdemeanor under Prop 47 may apply to the court to have their offense designated a misdemeanor. (Penal Code § 1170.18(0).)
- Such a designation makes the conviction a misdemeanor for "all purposes," other than firearm possession as a possible basis for a subsequent "former felon with a firearm" charge. (§ 1170.18(k).)
- Reduction is mandatory if the person qualifies under the redefined statutes; there is no dangerousness exception, as there is for petitioners who are currently serving sentences. (§ 1170.18(g).)
- As is true for petitioners who are currently serving sentences, Prop 47 applicants who have completed their sentences are not eligible to be resentenced if they have a Superseding Prior, including a sex offense that requires registration under Penal Code § 290. (§ 1170.18(i).)

Applicants are not required to use the forms that the Superior Court recently promulgated for post-sentence use in Prop. 47 cases. However, the relief available under Prop 47 appears to be conditioned on the filing of an application before the original trial court. (See § 1170.18(f).) While Prop 47 states that no hearing is necessary to grant or deny an application unless requested by the applicant (Penal Code § 1170.18(h)), due process requires that the District Attorney's Office be permitted an opportunity to be heard in each such case. (See Cal. Const., art. I, § 29; *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1297.)

Deputies handling applications from Prop 47-affected defendants who have already completed their sentences should ask for an opportunity to retrieve the District Attorney's Office case file and generate a current copy of the applicant's criminal history. Our Office has the right and the responsibility to verify that the information contained in an application is accurate and complete in order to determine whether the applicant is, in fact, eligible for relief under Prop. 47.

Deputies handling resentencing applications should do as follows:

1. Secure a Copy of the Petitioner's Criminal History


Carefully review the criminal history of each applicant who seeks resentencing under Prop 47 to establish whether the petitioner has been convicted of a Superseding Prior or any other disqualifying offenses.

2. Determine the Facts of the Commitment Offense

Determine whether a reasonable argument can be made that the value of the property at issue in theft-related cases exceeded \$950. If so, follow the guidance provided in Step 2 of Appendix B of this GOM.

GENERAL OFFICE MEMORANDUM 15-013

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE 
Chief Deputy District
Attorney

SUBJECT: PROPOSITION 47, Supplement 3
[HANDLING OF CASES FILED FOR ARREST WARRANT]

DATE: FEBRUARY 18, 2015

Background

Many cases filed by the District Attorney's Office in the years preceding the passage of Proposition 47 (Prop 47) were filed for arrest warrant and remain in warrant status. While Prop 47 is expected to affect a substantial number of these cases, no known authority imposes upon a prosecutorial office the duty to take action on inactive cases filed for warrant when the punishment is reduced for offenses charged in those cases.

The court, rather than the state, bears primary responsibility for a criminal case after charges have been filed. "Once the executive power has been exercised by the filing of a criminal charge 'the process which leads to acquittal or to sentencing is fundamentally judicial in nature.' (*People v. Superior Court (Felmann)* (1976) 59 Cal.App.3d 270, 275, quoting *People v. Tenorio* (1970) 3 Cal.3d 89, 94.) Although the District Attorney's Office provides bail recommendations at the time a complaint is filed, the setting of bail amounts and any revisions thereto are the exclusive province of bench officers. (Pen. Code, § 1268, et seq.) The duty, if any, to ensure that bail settings are modified commensurate with changes in the law thus lies with the court.

Our Office is also not in a position to assess, preemptively, the viability of due process challenges that might eventually be lodged in inactive Prop 47 —affected cases filed for arrest warrant. A defendant is responsible for asserting his or her right to a speedy trial. (*Barker v. Wingo* (1972) 407 U.S. 514, 530; *People v. Perez* (1991) 229 Cal.App.3d 302.) Even when prejudice is presumed, the trial court must consider and balance the length of the delay, the reason for the delay, and the defendant's assertion of his or her right to a speedy trial. (*Barker, supra.*)

Before a speedy trial issue can fairly be resolved, the court must hold a hearing at which the prosecution is entitled to introduce evidence that may serve to justify the delay, demonstrate due diligence, or assign responsibility for the delay to the defendant; the defendant is to be afforded an opportunity to explain the extent to which he or she may have been prejudiced by the delay. Unless and until a defendant invokes speedy trial guarantees — rights that the defendant may ultimately elect to waive (*People v. Egbert* (1997) 59 Cal.App.4th 503, 511) — neither our Office

nor the court possesses sufficient information to determine whether an anticipated *Serna* motion should be granted in a given case.

Handling of Prop 47 —Affected Cases in Warrant Status

Prop 47 — affected matters that are in warrant status should be handled as defendants surrender or are arrested on an outstanding warrant. At that time, the assigned deputy should carefully review a current copy of the defendant's criminal history and determine whether he or she has ever been convicted of a "Superseding Prior." Appendix A, attached to this GOM, provides a recently updated list of Superseding Priors that disqualify defendants from relief under Prop 47.

If the charged offenses in a given case are reducible to misdemeanors under Prop 47, deputies should consider the possibility that our Office could file alternative felony charges that were not affected by Prop 47 (see GOM 14-090) or offenses that aggregate theft-related losses so as to meet the greater than \$950 threshold (see *People v. Whitmer* (2014) 59 Cal.4th 733; *People v. Bailey* (1961) 55 Cal.2d 514).

When felony charges in a case reducible under Prop 47 are not appropriate, our Office case file should immediately be turned over to local prosecutors if the charged offense(s) occurred in a municipality that prosecutes its own misdemeanors. If the Prop 47 —affected criminal conduct took place in a jurisdiction that is the responsibility of the District Attorney's Office, deputies are directed to follow the guidelines below:

- Defendants whose cases have been in arrest warrant status are eligible to receive the benefits provided by Prop 47, even though the charged criminal conduct may have been committed, and the case may have been filed, prior to the passage of Prop 47. (*In re Estrada* (1965) 63 Cal.2d 740, 745.)
- Do not attempt to generate an amended complaint through PIMS that reflects that a charged offense is being reduced to a misdemeanor under Prop 47. The PIMS system has been modified to adapt prospectively to changes implemented by Prop 47 and may not permit revisions to charges that were filed prior to the passage of Prop 47.
- When the matter is called in court, ask the bench officer for leave to amend the felony complaint, by interlineation, to reflect changes effectuated by Prop 47: (a) that a charged offense is now a misdemeanor; or (b) that a new charge (such as petty theft, pursuant to Penal Code sections 484(a)/490.2) should be added, and a now inapplicable offense (such as grand theft) should be dismissed.
- If the court insists that a new charging document be filed that reflects proposed changes necessitated by Prop 47, handwrite or type all appropriate revisions onto a copy of an existing complaint, identify the document as an amended complaint, then file it with the judicial assistant, securing conformed copies for the defense and for our case file.

In all felony cases, Disposition Reports must be completed and cases must be closed in PIMS. (See Special Directives 06-06 and 08-01.) As they apply to cases reduced pursuant to Prop. 47, these procedures are discussed in GOM 15-014 and are also addressed in PIMS Adult Bulletins 100.7a and 100.7b, which were emailed from the DA Systems Helpdesk to all District Attorney personnel on January 2, 2015 and January 8, 2015, respectively.

Victims' Rights

Victims have a constitutional right to be notified of their rights as set forth in the California Constitution. (Cal. Const., art. I, § 28(b)(17).) Some victims' rights are automatic and some must be affirmatively requested. Victims who have not been notified of their rights will not know that they have these rights nor will they know that can request to enforce their rights. Importantly, Marsy's Law notification letters may not have been generated in cases that were filed for arrest warrant, either before or after the enactment of Marsy's Law in 2008.

Victim notification letters should be mailed before any action is taken in a case involving civilian victims, including dismissals initiated either by our Office or by defense motion, and matters in which a defendant appears on a case in which a warrant had been outstanding. Deputies should also be mindful of the fact that restitution collection mechanisms that exist for felonies are likely to cease if an offense is reduced to a misdemeanor. Deputies should undertake reasonable efforts to ensure that defendants continue to satisfy any outstanding restitution orders.

sk

Attachment

APPENDIX A

List of "Superseding Priors"

[Offenses in Penal Code § 290(c) and Penal Code § 667(e)(2)(C)(iv)]

An attempt also constitutes a Superseding Prior

When enhanced by PC 186.22(4)

The Superseding Prior may be a felony or misdemeanor conviction

PC 37	Treason
PC 128	Perjury causing execution of an innocent person
PC 136.1 e	Intimidation of a witness, <i>with gang enhancement</i>
PC 182	Conspiracy to commit life crime or PC 290 offense
PC 187 *	Murder
PC 191.5(a) *	Gross vehicular manslaughter while intoxicated
PC 191.5(b) *	Vehicular manslaughter while intoxicated (formerly PC 192(c)(3))
PC 205	Aggravated mayhem
PC 207 * ¹	Kidnapping, <i>if with intent to commit a sex offense</i>
PC 209	Aggravated kidnapping
PC 209.5	Kidnapping in the commission of carjacking
PC 213(a)(1)(A) e	Home invasion robbery, <i>with gang enhancement</i>
PC 215 e	Carjacking, <i>with gang enhancement</i>
PC 217.1	Attempted murder of a government official
PC 218	Train wrecking
PC 219	Train derailing
PC 220 *	Assault, <i>with intent to commit sex crime</i>
PC 236.1 *, subds. (b), (c)	Human trafficking
PC 243.4 *	Sexual battery
PC 245(d)(3)	Assault on a peace officer or firefighter
PC 246 e	Shooting at inhabited dwelling/occupied car, <i>with gang enhancement</i>
PC 261(a) *, subds. (1), (2), (3), (4), (6)	Rape
PC 262(a) * ²	Spousal rape
PC 264.1 *	Rape/Sexual penetration in concert
PC 266 *	Enticing a minor for prostitution

¹ See PC 290(c) and WI 6600(b) for applicable sex offenses

² An attempt constitutes a Superseding Prior only if the defendant was imprisoned on the charge

PC 266c *4	Inducing sex act by fear
PC 266h(b) *	Pimping involving a minor
PC 266i(b) *	Pandering involving a minor
PC 266j *	Providing a child for a lewd act
PC 267 *	Abducting a minor for prostitution
PC 269 *	Aggravated sexual assault of a child
PC 272 *	Contributing to the delinquency of a minor, <i>if the offense involved lewd or lascivious intent</i>
PC 273ab	Assault on a child, resulting in death
PC 285 *	Incest
PC 286 *	Unlawful sodomy
PC 288 *	Lewd or lascivious act on a child
PC 288a * 4	Unlawful oral copulation
PC 288.2 *	Providing harmful material to a minor for seduction
PC 288.3 *	Communicating with a minor with sexual intent
PC 288.4 * 4	Arranging meeting with a minor with sexual intent
PC 288.5 *	Continuous lewd or lascivious acts with a child
PC 288.7 *	Sex act with a child
PC 289 *4	Unlawful sexual penetration
PC 311.1 * 4	Pornography involving a minor, with intent to distribute
PC 311.2 *4, subds. (b), (c), (d)	Pornography involving a minor, for commercial purposes
PC 311.3 * 4	Sexual exploitation of a minor
PC 311.4 * 4	Using a minor to pose for pornography
PC 311.10 *	Advertising pornography involving a minor
PC 311.11 *4	Possession of pornography depicting a minor
PC 314 *4, subds. (1), (2)	Indecent exposure
PC 451.5	Aggravated arson
PC 519 e	Extortion, <i>with gang enhancement</i>
PC 647.6 *4	Annoying/Molesting a minor (formerly PC 647a)
PC 653f(b)	Solicitation to commit murder
PC 653f(c) *	Solicitation to commit a specified sex crime
PC 667.61	Sex crime, with aggravating factor ("one strike" offenses)
PC 667.7	Habitual offender causing GBI
PC 667.71	Habitual sex offender
PC 4500	Assault by a life prisoner on a non-inmate
PC 11418(b), subds. (1), (2)	Using a weapon of mass destruction
PC 12022.55 e	Shooting from a car, causing GBI , <i>with gang enhancement</i>

PC 18745 *	Exploding a destructive device with intent to murder (formerly PC 12308)
PC 18755	Exploding a destructive device causing GBI (formerly PC 12310)
MV 1672(a)	Military sabotage